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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/676,346

09/29/2003

Dario De Judicibus

FR920030032US1

7141

30449 7590 06/01/2009
SCHMEISER, OLSEN & WATTS
22 CENTURY HILL DRIVE
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LATHAM, NY 12110

EXAMINER

THEIN, MARIA TERESA T

ART UNIT

PAPER NUMBER

3627

MAIL DATE

DELIVERY MODE

06/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/676,346

Applicant(s)

JUDICIBUS ET AL.

Examiner

MARISSA THEIN

Art Unit

3627

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are not persuasive.

For example, Applicants remark pertaining to the "request that claims 9-12 be examined".

Examiner does not agree. Claims 9-12 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims have separate utility such as a first user telephone number and a second user telephone number; said transaction server verifying that the second user telephone number matches the first user telephone number; a second user identification identifying the user and the retailer had confirmed that the second user identification matched the first user identification. Claims 1-6 is directed to an invention that is independent or distinct from the above invention for the following reasons: the claims have separate utility such as authenticating said phone number and retailer identification with the stored confidential user information. Therefore, claims 9-12 are withdrawn from consideration as being directed to a non-elected invention.

Furthermore, Applicants remark that "Vazvan does not disclose reading at the transaction server the phone number of the wireless device communicated by the carrier transporting the SMS".

Examiner does not agree. Vazvan discloses a SIM card where the user's identity is included (page 3, lines 30-31). The wireless network sends customer's identity which can be the subscriber identity or a different code to the computing station. The computing station can identify the calling party because it has received the calling party's identity from the wireless network and compared with the calling party's identity based on the computing station. (Page 4, line 26-page 5, line 4). The definition of SIM cards in Whatis.com recites "A SIM card, also known as a subscriber identity module, is a smart card that stores data for GSM cellular telephone subscribers. Such data includes user identity, location and phone number, network authorization data, personal security keys, contact lists and stored text messages. Security features include authentication and encryption to protect data and prevent eavesdropping. A SIM card can be switched easily from one phone set to another. The portability of data offers a number of benefits. For example, a user that buys a new phone can install the current SIM card to associate the new phone with the same number and user preferences as the old one."

Such SIM card where the user's identity is included; wireless network which sends customer's identity that can be the subscriber identity or a different code to the computing station; computing station can identify the calling party because it has received the calling party's identity from the wireless network and compared with the calling party's identity based on the computing station; and SIM card definition which includes user identity, location and phone number are considered "reading at the transaction server the phone number of the wireless device communicated by the carrier transporting the SMS".